



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

March 21, 1995

Mr. James A. Collins  
Executive Director  
Texas Department of Criminal Justice  
P.O. Box 99  
Huntsville, Texas 77342-0099

Letter Opinion No. 95-014

Re: Whether the Texas Department of Criminal Justice ("TDCJ") may release certain information about inmates incarcerated in the Institutional Division of TDCJ to the Texas Council on Family Violence, Inc. (ID# 25651)

Dear Mr. Collins:

You ask whether the Texas Department of Criminal Justice ("TDCJ") may release certain information about inmates incarcerated in the Institutional Division of TDCJ to the Texas Council on Family Violence, Inc. ("TCFV"). You believe that article 42.18, section 18 of the Code of Criminal Procedure prevents you from providing the information to the TCFV.

You inform us that the TCFV is a Texas nonprofit corporation with the primary goals of assisting battered women and their children and eliminating violence against women by advancing the shelter movement in Texas. It receives funding from various state agencies, including the Texas Department of Human Services, the Governor's Office, Criminal Justice Division, and TDCJ, Criminal Justice Assistance Division. Your question about providing information to the TCFV arises in connection with Senate Concurrent Resolution No. 26 of the Seventy-second Legislature, which addressed the problem of domestic violence. The resolution included the following paragraph:

RESOLVED, That the 72nd Legislature of the State of Texas hereby request the Governor of Texas to use the authority granted her under Section 16, Article 42.18, Code of Criminal Procedure, to direct the Board of Pardons and Paroles, in consultation with the Texas Council on Family Violence, Incorporated, to investigate the cases of all persons who pled to or were convicted of murder or manslaughter when the offense was directly related to victimization by domestic violence . . . .

S.C.R. 26, 72d Leg., R.S. 1991 Tex. Gen. Laws 3296, 3297. Section 16 of article 42.18, Code of Criminal Procedure, provides in part:

On request of the governor, the members of the board shall investigate and report to the governor with respect to any person being considered by the governor for pardon, commutation of

sentence, reprieve, remission of fine, or forfeiture and make recommendations thereon. The provisions of this article may not be construed as preventing or limiting the governor's exercise of powers vested in him by the constitution of this state.

Senate Concurrent Resolution No. 26 also includes the following paragraph:

RESOLVED, That the Board of Pardons and Paroles be directed to report to the governor regarding the findings of such investigations and any recommendations for pardons or clemency related to these cases . . . .

You state that the TDCJ has been working to provide TCFV access to inmate records to enable TCFV to investigate cases directly related to victimization by domestic violence.<sup>1</sup> However, you are concerned about the impact of article 42.18, section 18 of the Code of Criminal Procedure, which provides that certain information concerning inmates, including victim impact statements, "shall be confidential and privileged information and shall not be subject to public inspection; provided, however, that all such information shall be available to the governor, the members of the board, and the Criminal Justice Policy Council to perform its duties under Section 413.021, Government Code, upon request." Code Crim. Proc. art. 42.18, § 18.

As a threshold matter, we point out that Senate Concurrent Resolution No. 26 of the Seventy-second Legislature does not adopt, amend, or repeal any law. The Texas Constitution draws a clear distinction between "laws" and "resolutions." *Commercial Standard Fire & Marine Co. v. Commissioner of Ins.*, 429 S.W.2d 930, 934 (Tex. Civ. App.--Austin 1968, no writ). Article III, section 30 of the Texas Constitution provides that no law shall be passed except by bill. Tex. Const. art. III, § 30. Thus, a resolution does not have the same force and effect as a law introduced by a bill. In Attorney General Opinion M-1261 (1972) this office described the effect of a concurrent resolution concerning the Open Meetings Act<sup>2</sup> adopted by the 61st Legislature:

Although Senate Concurrent Resolution No. 83 . . . is a form of expression by which the Legislature stated its opinion or will in respect to allowing a governing body to consult in private with its attorney, and although the Constitution of Texas (Article IV, section 15) recognizes the right of the Legislature to express itself by resolutions, it is also manifestly clear that a statute cannot be amended, repealed, or otherwise modified by a resolution. . . .

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<sup>1</sup>We do not address your assumption that Senate Concurrent Resolution No. 26, which refers to investigations of cases by the Board of Pardons and Paroles "in consultation with the Texas Council on Family Violence, Inc.," expresses the legislature's wish to have the TCFV carry out such investigations.

<sup>2</sup>Formerly V.T.C.S. article 6252-17; now codified as Government Code chapter 551.

Thus, Senate Concurrent Resolution No. 83 could have no amendatory legal effect . . . .

*See Saunders v. State*, 341 S.W.2d 173, 178 (Tex. Crim App. 1960); *Caples v. Cole*, 102 S.W.2d 173, 176-77 (Tex. 1937); *Conley v. Texas Div. of the United Daughters of the Confederacy*, 164 S.W. 24, 26 (Tex. Civ. App. 1913, writ ref'd); Attorney General Opinion DM-197 (1993).

With this background in mind, we address your first question. You ask whether the TCFV may be considered a "state agency," so that the TDCJ could transfer confidential inmate information to it.<sup>3</sup> Your question is based on prior rulings of this office relating to the transfer of confidential information from one governmental body to another.

This office held in Attorney General Opinion M-713 (1970) that information that "shall not be disclosed publicly" may be transferred from one state agency to another, because the interagency sharing of data, in carrying out a related administrative aim, could not be considered as a public disclosure of the information. The adoption of the Open Records Act did not undercut this policy. Attorney General Opinion H-242 (1974) at 3. Thus, information which is not required to be disclosed to the public under the Act may still be transferred between governmental bodies without violating its confidentiality or destroying its confidential character. *Id.* at 4. *See* Attorney General Opinions H-836 (1976) (holding that a state agency may disclose confidential information to county and municipal governments); Open Records Decision Nos. 561 (1990) at 7 (holding that information "deemed confidential" under federal law may be shared with Texas governmental body without destroying confidentiality); 272 (1981) (stating that result of blood alcohol test performed at hospital and transferred to police department did not lose protection of law enforcement exception); 183 (1983) (holding that law enforcement information transferred from local police department to state agency remains confidential under law enforcement exception). *But see* Attorney General Opinion JM-590 (1986).

You have not presented any arguments supporting the conclusion that the TCFV is a state agency. We have reviewed relevant law and determined that the TCFV is not a state agency.

You have informed us that TCFV is a nonprofit corporation created in 1979. It was therefore presumably created pursuant to the Texas Non-Profit Corporation Act, V.T.C.S. arts. 1396-1.01 to 1396-11.01, by three or more natural persons acting as incorporators<sup>4</sup> of a corporation. V.T.C.S. art. 1396-3.01A. A private corporation is a

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<sup>3</sup>You do not ask, and we do not decide, whether the Department of Criminal Justice has authority to transfer information within section 18 of article 42.18 of the Code of Criminal Procedure to state officers and agencies other than those expressly mentioned in that provision.

<sup>4</sup>Article 1396-3.01A formerly provided that three or more natural persons might act as incorporators of a corporation, but now provides that a corporation may be created by an individual acting

corporation "founded by and composed of private individuals for private purposes, as distinguished from governmental purposes, and having no political or governmental franchises or duties." BLACK'S LAW DICTIONARY 409 (rev. 4th ed. 1968). See Attorney General Opinion H-1272 (1978) (holding that Texas Department of Labor and Standards may not grant funds to private entity such as nonprofit corporation). In contrast, a state agency is created by the legislature, which delegates to it some portion of the powers of government. See Tex. Const. art. II, § 1; art. III, § 1; *Robbins v. Limestone County*, 268 S.W. 915, 920 (Tex. 1925). State agencies are public entities. See BLACK'S LAW DICTIONARY 1393 (defining "public" as "[p]ertaining to a state, nation, or whole community"). The legislature defined "state agency" expansively in section 403.013 of the Government Code, which requires the comptroller to prepare for the governor "a statewide financial report covering all state agencies," but the definition does not include a private entity. The definition is as follows:

(a) In this section, "state agency" means:

(1) any department, commission, board, office, or other agency in the executive or legislative branch of state government created by the constitution or a statute of this state;

(2) [the courts and state judicial agencies created by the constitution or a statute];

(3) a university system or an institution of higher education as defined by Section 61.003, Education Code; or

(4) *another governmental organization* that the comptroller determines to be a component unit of state government for purposes of financial reporting under the provisions of this section.

Gov't Code § 403.013(a) (emphasis added). See also Attorney General Opinion MW-295 (1981) (holding that the Texas Guaranteed Student Loan Corporation, a public nonprofit corporation created by statute, is not a state agency for purposes of numerous statutes). By even the broadest definition of state agency that we have located in case law, a private, nonprofit corporation could not be deemed a "state agency." See *National Sur. Corp. v. Friendswood Indep. Sch. Dist.*, 433 S.W.2d 690, 694 (Tex. 1968) (stating that school districts are state agencies created and employed to administer system of public schools). Since TCFV is not a state agency,<sup>5</sup> the disclosure of confidential information by the TDCJ to the TCFV would not be an authorized interagency sharing of data.

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(footnote continued)

as an incorporator. Act of April 27, 1979, 66th Leg., R.S., ch. 120, § 3, 1979 Tex. Gen. Laws 213, 214 amended by Act of April 30, 1987, 70th Leg., R.S., ch. 93, § 37, 1987 Tex. Gen. Laws 203, 226. The incorporator or incorporators act by signing and verifying the articles of incorporation and delivering them to the Secretary of State. V.T.C.S. art. 1396-3.01A.

<sup>5</sup>The Open Records Act defines "governmental body" to include "the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is

You also ask whether, in light of Senate Concurrent Resolution No. 26 and section 18 of article 42.18, Code of Criminal Procedure, the TCFV may be considered an agent or designee of the governor for purposes of gathering otherwise confidential information.

It is well established that public duties must be performed and governmental powers exercised by the officer or body designated by law, in particular, duties that call for the exercise of reason or discretion. 60 TEX. JUR. 3D *Public Officers and Employees*, § 143 (1988) (and cases cited therein). A board may delegate administrative or ministerial functions not calling for the exercise of reason or discretion by appointing agents to perform duties of that character. *Id.*

Senate Concurrent Resolution No. 26 does not attempt to designate the TCFV as the agent of the governor. It merely resolves that the Seventy-second Legislature "request the Governor of Texas to use the authority granted her under Section 16, Article 42.18, Code of Criminal Procedure, to direct the Board of Pardons and Paroles, in consultation with the Texas Council on Family Violence, Incorporated, to investigate" certain persons who pled to or were convicted of murder or manslaughter. You do not cite any provision that makes TCFV an agent or designee of the governor, nor have we found such a provision. We conclude that there is no authority for considering the TCFV an agent or designee of the governor for purposes of gathering otherwise confidential information. However, the Board of Pardons and Paroles may certainly work with the Council on Family Violence to accomplish the purposes of Senate Concurrent Resolution No. 26 in a manner that does not violate the confidentiality provisions of section 42.18.

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(footnote continued)

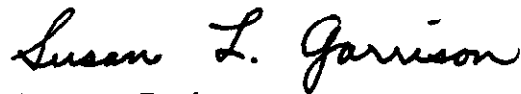
supported in whole or in part by public funds." Under this expansive definition of "governmental body," private, nonprofit corporations supported by public funds are subject to the Open Records Act, Gov't Code ch. 552. See Open Records Decision No. 195 (1978) (records of Hidalgo County Jobs for Progress, Inc., nonprofit community action organization that receives county funds, are subject to Open Records Act). Private, nonprofit corporations that receive public funds are not necessarily governmental bodies for the purpose of any other statute. See Attorney General Opinion DM-7 (1991) (holding that the Parker County Committee on Aging, a nonprofit corporation that receives public funding, is not a governmental body within the Open Meetings Act, Gov't Code ch. 551).

**S U M M A R Y**

The Texas Council on Family Violence, Inc., a nonprofit corporation, is not a state agency. The disclosure of confidential information by the Department of Criminal Justice to the TCFV would not be an authorized interagency sharing of data between state agencies.

Senate Concurrent Resolution No. 26 of the Seventy-second Legislature does not establish the Texas Council on Family Violence, Inc., as an agent of the governor for the purpose of gathering confidential information.

Yours very truly,

A handwritten signature in cursive script that reads "Susan L. Garrison".

Susan L. Garrison  
Assistant Attorney General  
Opinion Committee